

MAR - 2 1993

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RECORDED AT REQUEST OF  
*City of Richmond*  
MAR 2 1993  
9 O'CLOCK P M.  
AT  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER  
*[Signature]*

BOOK 18317 PG 322

RECORDED AT REQUEST OF:

CITY OF RICHMOND

WHEN RECORDED, MAIL TO:

CITY OF RICHMOND  
CITY HALL  
2600 Barrett Avenue  
Richmond, California 94804

Attention: William M. Bonnell  
Senior Assistant City Attorney

NOTICE OF CONSENT ORDER

NOTICE IS HEREBY GIVEN that as of the 20th day of November, 1992, the California Department of Toxic Substances Control (the "Department"), the City of Richmond, California, a municipal corporation, and Union Carbide Chemicals and Plastics Company Inc., a New York corporation ("Union Carbide"), made and entered into a certain Consent Order dated as of November 20, 1992 (the "Order"), pursuant to the terms and provisions of which Richmond and Union Carbide have agreed to implement certain soil management procedures in connection with specified construction activities on a certain parcel of land located in The City of Richmond, California, and being more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes.

This Notice of Consent Order shall be placed of record in the Land Records of the County of Contra Costa, California, as notice of the existence and terms of the Order, which are incorporated herein by reference and made a part hereof for all purposes as if fully set forth herein. Copies of the Order are available for review at the address of Richmond set forth above.

IN WITNESS WHEREOF, Richmond has caused this Notice of Consent Order to be executed as of the date first written above.

Attest:

CITY OF RICHMOND, a  
municipal corporation

*Paul M. Francis*  
City Clerk

*[Signature]*  
Mayor

Approved as to Form:

*Michael H. [Signature]*  
City Attorney

EXHIBIT "A"  
LEGAL DESCRIPTION

Union Carbide Site at Terminal No. 2

That certain real property in the City of Richmond, County of Contra Costa, State of California, being a portion of Lots 19 and 20, Section 24, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tide Lands Situate in the County of Contra Costa, State of California, 1872," filed June 11, 1917, Rack Map No. 9, in the office of the Recorder of Contra Costa County, California, being more particularly described as follows:

Beginning at the northern corner of the parcel of land described in Paragraph B of the deed from Bay Counties Land Company to the City of Richmond, recorded February 13, 1918, in book 315 of Deeds at page 37 in the office of the Recorder of Contra Costa County, California, said corner also being on the west line of Harbour Way South (formerly Tenth Street) as described in the deed from Bay Counties Land Company to the City of Richmond, recorded July 20, 1927, in book 84 of Official Records at page 434 in the office of the Recorder of Contra Costa County, California; thence

South 5° 27' 35" East, 29.79 feet along said west line of Harbour Way South to its intersection with the north line of Chandler Avenue; thence

South 84° 32' 24" West, 231.28 feet along said north line of Chandler Avenue; thence

North 3° 19' 53" West, 352.00 feet; thence

North 84° 32' 24" East, 218.21 feet to a point on said west line of Harbour Way South; thence

South 5° 27' 35" East, 321.97 feet along said west line of Harbour Way South to the Point of Beginning.

Containing an area of 1.8 acres, more or less.

END OF DOCUMENT

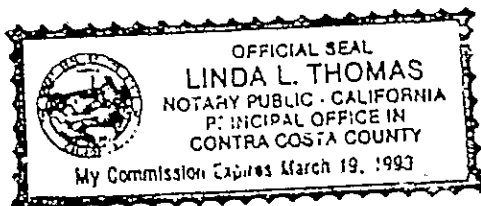
DP  
February 11, 1993

BOOK 183176 325

STATE OF CALIFORNIA       )  
                                      )ss  
COUNTY OF CONTRA COSTA    )

On January 22, 1993, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared GEORGE L. LIVINGSTON and EULA M. BARNES, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the same.

Witness my hand and official seal.



Linda L. Thomas  
LINDA L. THOMAS  
Notary Public

SEP 18 317Pc 324

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: ) CONSENT ORDER  
Port of Richmond Terminal No. 2 ) HSA 92/93-004  
1215 Harbour Way South ) Health and Safety Code  
Richmond, California ) Sections 205  
and  
25355.5(a)(1)(C)

I.

INTRODUCTION

1.1. Parties. This Consent Order is issued by the State Department of Toxic Substances Control (the "Department") to the City of Richmond, California ("Richmond"), a municipal corporation, and Union Carbide Chemicals and Plastics Company Inc. ("Union Carbide"), a New York corporation (hereafter "Respondents").

1.2. Jurisdiction. This Consent Order is issued by the Department to Respondents pursuant to authority under California Health and Safety Code Sections 205 and 25355.5(a)(1)(C). Respondents acknowledge the Department's jurisdiction to issue this Consent Order and agree to the terms hereof.

II.

STATEMENT OF FACTS

This Consent Order is entered into with respect to the following facts:

2.1. Richmond is the owner of an 1.9 acre parcel of land located at 1215 Harbour Way South, Richmond, California,

1 commonly known as Port of Richmond Terminal No. 2 (the "Facili-  
2 ty"). A map depicting the Facility is attached hereto as Exhib-  
3 it A.

4 2.2. By lease dated October 18, 1976 (with Amend-  
5 ments), Union Carbide actively used the Facility until December  
6 31, 1987 for the storage of the chemicals listed in Paragraph  
7 2.3 hereof.

8 2.3. A preliminary Environmental Survey Report pre-  
9 pared by Harding Lawson Associates, dated June 15, 1988, and a  
10 Ground Water Contamination Investigation and Hazard Assessment  
11 Report prepared by Bechtel Environmental, Inc., dated October  
12 23, 1989, documented the presence of various substances of envi-  
13 ronmental concern in the soil and ground water at the Facility.  
14 These substances include methanol, isopropanol, acetone, tolu-  
15 ene, methyl ethyl ketone, methyl isobutyl ketone, isophorone,  
16 2-hexanone, and 1, 2- dichloroethane.

17 2.4. The disturbance of soils beneath the ground  
18 surface of the Facility could result in the release of contami-  
19 nants from the soil and ground water to the environment.

20 2.5. The provisions set forth below are necessary to  
21 ensure protection of human health and the environment in the  
22 event soil-disturbing activities occur at the Facility in the  
23 future.

24 2.6. Union Carbide as a past tenant on the Facility  
25 has entered into a separate agreement with Richmond to pay  
26 certain costs associated with this Consent Order; Richmond as  
27 owner of the Facility has the legal authority to control the  
28 future use of the Facility.

1 III.

2 ORDER

3 IT IS HEREBY ORDERED that Respondents shall comply  
4 with the following requirements before engaging in soil disturb-  
5 ing activities at the Facility.

6 3.1. At least sixty (60) days prior to the intention-  
7 al disturbing of soil at the Facility below 48 inches from the  
8 surface as existing on the date hereof, Richmond shall submit to  
9 the Department for its review and approval a work plan which  
10 sets forth the methods and procedures for grading, excavating,  
11 trenching, backfilling, and managing contaminated soils during  
12 any development activity at the Facility (the "Soil Management  
13 Plan"). The Soil Management Plan shall include a plan providing  
14 for protection of health and safety during the course of any  
15 development activity at the Facility (the "Health and Safety  
16 Plan").

17 3.2. Respondents shall implement the Soil Management  
18 Plan and Health and Safety Plan as approved by the Department.

19 3.3. Union Carbide shall annually monitor the wells  
20 at the Facility numbered UC-3 through UC-17 (as described in the  
21 Ground Water Contamination and Hazard Assessment Report prepared  
22 by Bechtel Environmental, Inc., dated October 23, 1989), and  
23 shall submit copies of the monitoring results to the Department.

24 3.4. The requirements of this Order shall terminate  
25 following the Department's written determination that the provi-  
26 sions set forth in paragraphs 3.1, 3.2 and 3.3 above are no  
27 longer necessary to protect human health and the environment.  
28

1           3.5. Richmond shall cause to be recorded in the Land  
2 Records of the County of Contra Costa, a notice disclosing the  
3 existence and terms of this Order. The notice shall be in the  
4 form attached hereto as Exhibit 1 and shall be presented for  
5 recording to the office of the Recorder of Contra Costa County  
6 within ten (10) days of the effective date of this Order. At  
7 any time following termination of this Order, Richmond shall  
8 have the right to file in the Land Records of the County of  
9 Contra Costa, a notice of the termination of this Order. The  
10 notice of termination shall be substantially in the form at-  
11 tached hereto as Exhibit 2.

12                               IV.

13                               COSTS AND FEES

14           4.1. Oversight Costs and Fees. The Respondents shall  
15 be liable for all oversight costs and fees owing to the Depart-  
16 ment or the Board of Equalization for which they are liable  
17 under State and/or Federal law. Respondents shall pay all fees  
18 for oversight assessed pursuant to Health & Safety Code Section  
19 25343, upon billing by the Board of Equalization. Such fees  
20 shall be paid prior to the commencement of the work phase for  
21 which the Department's oversight occurs, unless such work phase  
22 has been wholly or partially completed prior to the execution of  
23 this Order, in which case such fees will be owed upon billing by  
24 and as specified by the Board of Equalization. The Department  
25 reserves any and all rights it may have under applicable law to  
26 recover all costs expended for oversight of response activities  
27 at the Facility which are in excess of the fees paid under  
28 Health and Safety Code Section 25343. In addition, failure or



1 refusal of the Respondents to comply with this Order may make  
2 the Respondents liable for any governmental costs incurred,  
3 including those payable from the Hazardous Substance Account or  
4 the Hazardous Substance Cleanup Fund for any response action at  
5 the Facility, as provided in Section 25360 of the Health and  
6 Safety Code and other applicable provisions of the law. Cost  
7 recovery may also be pursued by the Department under the Compre-  
8 hensive Environmental Response, Compensation and Liability Act,  
9 42 U.S.C. §§9601 et seq.

10 4.2. Non-admission of Liability and Reservation of  
11 Rights. The Respondents' consent to the issuance of this Order  
12 shall not be construed as an admission of liability for the  
13 conditions at the Facility or as a waiver of any immunity or  
14 defense from liability which Respondent may have under Federal,  
15 State or local statutory or common law. Nothing in this Order  
16 is intended or shall be construed to limit or preclude any right  
17 that Respondents have or may have to seek judicial or other  
18 review of orders or determinations by the Department pursuant to  
19 this Order.

20 V.

21 OTHER PROVISIONS

22 5.1. Project Engineer/Geologist. Any work performed  
23 pursuant to this Consent Order shall be under the direction and  
24 supervision of a qualified professional engineer or a certified  
25 engineering geologist with appropriate expertise in the manage-  
26 ment of contaminated soils.

27 5.2. Exhibits. All exhibits attached hereto are  
28 incorporated herein by this reference.

1           5.3. Submittals and Approvals. All submittals and  
2 notifications from Respondents required by this Consent Order  
3 shall be sent to:

4           Site Mitigation Branch Chief  
5           Attention: Project Officer  
6           Region 2, Site Mitigation Branch  
7           Department of Toxic Substances Control  
8           700 Heinz Avenue, Building F  
9           Second Floor  
10          Berkeley, California 94710

11          All approvals and decisions of the Department regard-  
12 ing such submittals and notifications shall be communicated to  
13 Respondents in writing by the Site Mitigation Branch Chief,  
14 Department of Toxic Substances Control or his/her designee. No  
15 informal advice, guidance, suggestions or comments by the De-  
16 partment regarding reports, plans, specifications, schedules or  
17 any other writing prepared or submitted by or for Respondents  
18 shall be construed to relieve Respondents of their obligation to  
19 obtain such formal approvals as may be required herein.

20          5.4. Department Review and Approval. If, after re-  
21 view of any report, plan, schedule, or other document which  
22 Respondents submit for the Department's approval pursuant to  
23 this Consent Order, the Department determines that the document  
24 is not satisfactory and cannot be approved, the Department may  
25 take the following actions:

26           (a) Make modifications to the submitted document  
27 which the Department deems necessary to protect public health  
28 and safety or the environment, and which are conceptually con-  
sistent with the intent and substance of this Consent Order;  
and/or

(b) Return the submitted document to Respondents

1 with recommended changes which are conceptually consistent with  
2 the intent and substance of the Consent Order. Within a time  
3 period specified by the Department, Respondents shall submit a  
4 revised document incorporating the recommended changes to the  
5 Department for approval. All such approvals by the Department  
6 shall be in writing. The Department shall complete its review  
7 of any document submitted by Respondents and provide any com-  
8 ments thereon within sixty (60) days after any such document has  
9 been received by the Department.

10           5.5. Modification and Termination. Respondents may  
11 by written request seek modification, termination or revision of  
12 this Consent Order or any portion of this Consent Order at any  
13 time. This Consent Order and any applicable program, plan or  
14 schedule, may be modified, terminated or revised by mutual writ-  
15 ten agreement of the parties at any time. Any modifications to  
16 this Consent Order shall be effective upon issuance and deemed  
17 incorporated in this Consent Order. Furthermore, Respondents  
18 may individually or jointly petition the Department to terminate  
19 this Order at any time, following which the Department may, in  
20 its discretion, terminate this Order in writing.

21           5.6. Time Period. Unless otherwise specified, time  
22 periods begin from the effective date of this Consent Order. If  
23 a date specified for action or a submission falls on a Saturday,  
24 Sunday, or legal holiday observed by the Department, the date  
25 shall be extended to the first following Department business  
26 day. The effective date of this Consent is the date of signa-  
27 ture by the Department.

28           5.7. Extension Request. If, for any reason, Respon-

1 dents are unable to perform any activity or submit any document  
2 within the time required under this Consent Order, Respondents  
3 may request in writing an extension of the time specified. The  
4 extension request shall include a justification for the delay.  
5 All such requests shall be in advance of the date on which the  
6 activity or document is due.

7 5.8. Extension Approvals. If good cause exists for  
8 an extension as set forth in Subsection 5.7 above, the Depart-  
9 ment will grant the request and specify in writing a new sched-  
10 ule. Respondents shall comply with the new schedule.

11 5.9. Sampling, Data and Document Availability.  
12 Respondents shall permit the Department and/or its authorized  
13 representatives to inspect and copy all sampling, testing, moni-  
14 toring or other data generated by Respondents or on their behalf  
15 in any way pertaining to work undertaken pursuant to this Con-  
16 sent Order. Respondents shall allow duplicate samples to be  
17 taken by the Department and/or its authorized representatives of  
18 any samples collected by Respondents pursuant to this Consent  
19 Order. The Department will provide Respondents results of all  
20 samples taken and analyzed by the Department. Respondents shall  
21 maintain a central depository of the data, reports, and other  
22 documents prepared pursuant to this Consent Order. Respondents  
23 shall notify the Department in writing at least 30 days prior to  
24 destroying any documents prepared pursuant to this Consent Or-  
25 der.

26 5.10. Confidentiality. All trade secrets designated  
27 as such by Respondents and received by the Department shall be  
28 kept confidential and shall not be disclosed to any person,

1 including any party to this Consent Order, without the written  
2 authorization of the party possessing the trade secret, except  
3 that such trade secrets may be disclosed to other governmental  
4 agencies, including the United States Environmental Protection  
5 Agency, in connection with the Department's activities pursuant  
6 to this Consent Order. As used in this paragraph, the term  
7 "trade secrets" shall be defined as it is in Section 25358.2(a)  
8 of the California Health and Safety Code. Notwithstanding this  
9 definition, if Section 25358.2(a) is amended or new law is added  
10 which modifies the scope of trade secret confidentiality avail-  
11 able under the Health and Safety Code during the implementation  
12 of this Consent Order, this paragraph shall be interpreted con-  
13 sistently with such amendment or new law.

14           5.11. Compliance with Applicable Laws. Respondents  
15 shall carry out this Consent Order in compliance with all appli-  
16 cable local, state, and federal requirements, including, but not  
17 limited to, requirements to obtain applicable permits and to  
18 assure worker safety.

19           5.12. Endangerment During Implementation. In the  
20 event that the Department determines that any activities or  
21 circumstances are creating an imminent or substantial endanger-  
22 ment to the health and welfare of people on the Facility or in  
23 the surrounding area or to the environment, the Department may  
24 order Respondents to stop further implementation of this Order  
25 for such period of time as needed to abate the endangerment.  
26 Any deadline contained in this Order which is directly affected  
27 by a Stop Work Order under this section shall be extended for  
28 the term of such Stop Work Order.

1           5.13. Government Liabilities. The State of Califor-  
2 nia shall not be liable for any injuries or damages to persons  
3 or property resulting from acts or omissions by Respondents,  
4 their officers, directors, employees, agents, receivers, trust-  
5 ees, successors, or of any persons, including but not limited  
6 to, firms, corporations, subsidiaries, contractors, or consul-  
7 tants in carrying out activities pursuant to this Consent Order,  
8 nor shall the State of California be held as party to any con-  
9 tract entered into by Respondents or their agents in carrying  
10 out activities pursuant to this Consent Order.

11           5.14. Severability. The requirements of this Consent  
12 Order are severable, and Respondents shall comply with each and  
13 every provision hereof notwithstanding the effectiveness of any  
14 other provision.

15           5.15. Parties Bound. This Consent Order applies to  
16 and is binding upon Respondents, their contractors, and their  
17 successors and assigns and upon the Department and any successor  
18 agency with responsibility for administering the provisions of  
19 Chapter 6.8 of Division 20 of the Health and Safety Code.

20 //

21 //

22 //

23 //

24 //

25 //


26 //

27

28

5.16. Representative Authority. Each undersigned representative of the parties to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and to legally bind such party to this document.

It is so agreed this 20<sup>th</sup> day of November, 1992.

  
Barbara J. Cook, Chief  
Site Mitigation Branch  
California Department of Toxic  
Substances Control  
Region 2

I acknowledge receipt of the foregoing Consent Order  
and consent to its terms and conditions.

Attest: City of Richmond

Eula M. Barnes By:  
Clerk of the City  
of Richmond

By: *[Signature]*  
Mayor

I acknowledge receipt of the foregoing Consent Order  
and consent to its terms and conditions.

Union Carbide Chemicals and  
Plastics Company Inc.

By: R. Van Mynen  
R. Van Mynen  
Vice President

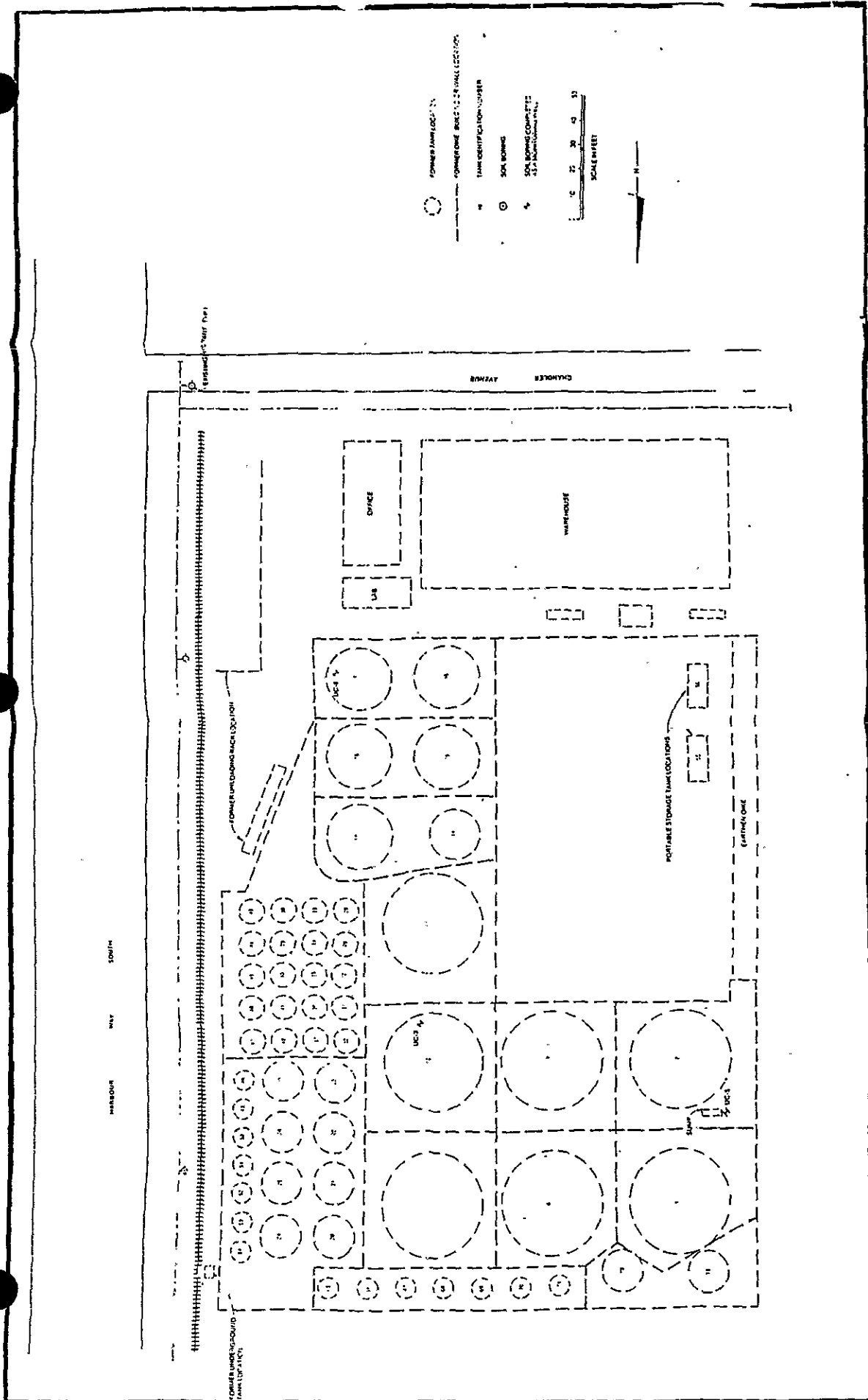


Exhibit A



RECORDED AT REQUEST OF:

CITY OF RICHMOND

WHEN RECORDED, MAIL TO:

CITY OF RICHMOND

CITY HALL

2600 Barrett Avenue

Richmond, California 94804

NOTICE OF CONSENT ORDER

NOTICE IS HEREBY GIVEN that as of the \_\_\_\_ day of \_\_\_\_\_, 1992, the California Department of Toxic Substances Control (the "Department"), the City of Richmond, California, a municipal corporation, and Union Carbide Chemicals and Plastics Company Inc., a New York corporation ("Union Carbide"), made and entered into a certain Consent Order dated as of November \_\_\_\_, 1992 (the "Order"), pursuant to the terms and provisions of which Richmond and Union Carbide have agreed to implement certain soil management procedures in connection with specified construction activities on a certain parcel of land located in The City of Richmond; California, and being more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes.

Exhibit 1

This Notice of Consent Order shall be placed of record in the Land Records of the County of Contra Costa, California, as notice of the existence and terms of the Order, which are incorporated herein by reference and made a part hereof for all purposes as if fully set forth herein. Copies of the Order are available for review at the address of Richmond set forth above.

IN WITNESS WHEREOF, Richmond has caused this Notice of Consent Order to be executed as of the date first written above.

Attest:

CITY OF RICHMOND, a  
municipal corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Approved as to Form:

\_\_\_\_\_  
City Attorney

RECORDED AT REQUEST OF:

CITY OF RICHMOND

WHEN RECORDED, MAIL TO:

City of Richmond  
City Hall  
2600 Barrett Avenue  
Richmond, California 94804

NOTICE OF TERMINATION OF CONSENT ORDER

NOTICE IS HEREBY GIVEN that as of the [date] day of [month], [year], that certain Consent Order executed by the California Department of Toxic Substances Control (the "Department"), the City of Richmond, California, a municipal corporation ("Richmond"), and Union Carbide Chemicals and Plastics Company Inc., a New York corporation ("Union Carbide"), entitled "In the Matter of Port of Richmond Terminal No. 2, 1215 Harbour Way South, Richmond, California," and dated as of November \_\_\_, 1992 (the "Consent Order"), has been terminated. Notice of the Consent Order was heretofore recorded in the Land Records of the County of Contra Costa, California, Book \_\_\_, page \_\_\_, by Richmond. The Consent Order concerns a certain parcel of land located in the City of Richmond, California, and more particularly described on Exhibit "A" attached hereto and made a part hereof for all pur

poses. The Consent Order is no longer of any force and effect.

IN WITNESS WHEREOF, the City has executed this NOTICE as of the date set forth above.

Attest: City of Richmond, a  
municipal corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

Approved as to Form:

\_\_\_\_\_  
City Attorney